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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,086	10/28/2003	Bryan A. Lauer	Lauer 2 LUTZ 2 00242	4158
7590	07/09/2007		EXAMINER	
Richard J. Minnich, Esq. Fay, Sharpe, Fagan, Minnich & McKee, LLP Seventh Floor 1100 Superior Avenue Cleveland, OH 44114-2518			ALIA, CURTIS A	
			ART UNIT	PAPER NUMBER
			2609	
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			07/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/695,086	LAUER, BRYAN A.	
	Examiner	Art Unit	
	Curtis Alia	2609	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 October 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-24 and 26-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 6-24 and 26-29 is/are allowed.
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) 2-5 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892) -
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 28 October 2003, 04 May 2005.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION***Information Disclosure Statement***

1. The information disclosure statements (IDSs) submitted on 28 October 2003 and 04 May 2005 were considered by the examiner.

Claim Objections

2. Claims 1, 6 and 10 are objected to because of the following informalities: Claim 1, lines 14-15 states "the allowable subset that that is greater." The extra "that" should be removed. Claim 6, line 10 states the phrase "the temporary working." This should state --- the temporary working value ---. Claim 10, line 7 states the phrase "a next higher." This should state --- the next higher --- as recited on line 6. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al. (EP 1096742).

In claim 1, Chen discloses a QoS request and allocation method comprising:
receiving a requested maximum bit rate attribute (see column 6, lines 4-5);
determining if a maximum bit rate limit of the subscriber is equal to or greater than a value of a lowest valued member of a set of available maximum bit rate values (see column 10, lines 6-8);

offering to provide requested communication services in association with an offered maximum bit rate, if the maximum bit rate limit of the subscriber is equal to or greater than the value of the lowest valued member of the set of available maximum bit rate values (see QoS class, column 9, lines 52-54); and
declining the requested communications services if the maximum bit rate limit of the subscriber is not equal to or greater than the value of the lowest valued member of the set of available maximum bit rate values (see column 10, lines 49-52).

In claim 1, Chen discloses all of the subject matter with the exception that the offered maximum bit rate value being equal to a value of a member of an allowable subset of the set of available maximum bit rate values, the allowable subset consisting of members of the set of available maximum bit rates that have values less than or equal to the maximum bit rate limit, and the offered maximum bit rate being equal to a value of a member of the allowable subset that is greater than or equal to, the lower of the requested maximum bit rate value and the maximum bit rate limit, or has the highest value of the subset. However, it is well known in the art to use a lookup table to find an appropriate and allowable value or level of service associated with a type

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of data stream or subscription level. Thus, it would have been obvious to use a lookup table comprising bit rate values in a network element method of Chen. The lookup table can be implemented into the network element of Chen by allocating a portion of the memory or storage unit of the network element for the lookup table to be used when a bit rate request is received from the subscriber. The motivation for combining the lookup table with the network element of Chen is that a lookup table would be a memory-efficient and minimally CPU-intensive way to make a decision of what service level and/or bit rate value to allocate to the subscriber based on the subscriber's subscription level and/or actual need.

Allowable Subject Matter

6. Claims 2-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 6-24 and 26-29 are allowed as the prior art fails to teach the limitations: determining a temporary working value from among the requested maximum bit rate attribute value and the maximum bit rate limit.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kleo (US 2006/0159105), Heden (US 2006/0165027), Efthymiou (US 2003/0095572), Strickland et al. (US 6,080,202), Curcio et al. (US 2004/0057420), Scholefield et al. (US 6,216,006), Galand et al. (US 6,628,670), Esaki et al. (US 5,153,877).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Alia whose telephone number is (571) 270-3116. The examiner can normally be reached on Monday through Thursday 8:00AM to 5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dang Ton can be reached on (571) 272-3171. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Curtis A. Alia/
Examiner
Art Unit 2609

CAA

Dang T. Ton


DANG T. TON
SUPERVISORY PATENT EXAMINER